

March 6, 1998

MEMORANDUM TO: Distribution

FROM: Michael J. Rubino, Associate Director
Acquisition Services Branch

SUBJECT: Policy Memorandum 98-009 -
Contractor Confidentiality Agreements

1. Purpose. The purpose of this Policy Memorandum is revise the Acquisition Policy Manual (APM) regarding when an offeror or a contractor is required to sign the Contractor Confidentiality Agreement and to revise APM Exhibit II, Contractor Confidentiality Agreement.
2. References. APM 1.E.1.c., *Ensuring Confidentiality of Information with Contractors*, page 1-21
APM Exhibit II, Contractor Confidentiality Agreement
3. Scope. This Policy Memorandum is applicable to all Contracting Officers and other Acquisition Services Branch (ASB) personnel.
4. Background. Prior to or during contract performance, there may be times when a contractor is provided with or may obtain access to information which is of a confidential nature and which FDIC would not want to be disclosed or communicated to any other party. Confidential information may include, but is not be limited to, pre-sales asset data, loan documentation, internal investigations or audit plans/findings. When confidential information is to be provided in a solicitation or on a post-award basis, the Contracting Officer shall require the offeror(s) or contractor(s) to sign the Contractor Confidentiality Agreement (APM Exhibit II) prior to providing the information.
5. APM Change. In accordance with the foregoing, the APM is revised in the following areas:
 - a. APM 1.E.1.c. is deleted in its entirety and is re-stated as follows:

“1.E.1.c. *Ensuring Confidentiality of Information with Contractors.*
Contractors are required to take appropriate measures to ensure the

confidentiality of information and to prevent its inappropriate use and disclosure. Where a contract requires the rendering of goods or services to FDIC that are of such a nature that the contractor will receive or might have access to information of a confidential nature, the contractor shall be required to sign a Contractor Confidentiality Agreement prior to the information being provided. This Agreement is provided in the APM as Exhibit II. Generally, the determination of when information is confidential should be made by the Program Office representative involved in the procurement action.”

- b. APM 4.D.3.b.(11) is a new section added to the APM and is stated as follows:

“(11) Identification of any confidential information that will be provided to either the offerors during the solicitation phase or the contractor on a post-award basis. This will require the offerors or contractor to sign the Contractor Confidentiality Agreement (APM Exhibit II) prior to receiving the information.”

- c. APM 5.C.9. is a new section added to the APM and is stated as follows:

“5.C.9. Contractor Confidentiality Agreements. Some contracts require the rendering of services to FDIC that are of such a nature that the offerors or contractor(s) will be provided with or have access to confidential information. When this occurs, the Contracting Officer shall require the offerors or contractor(s) to sign and return a Contractor Confidentiality Agreement prior to receiving the information. For example, if the confidential information is provided during the solicitation phase, the Contracting Officer shall require all offerors to sign the Agreement before receipt of the information in, or associated with, an RFQ. All signed Agreements shall be maintained in the official Contract File. The Agreement is provided in the APM as Exhibit II. The Program Office should identify any confidential information required for a given procurement action in the Requirements Package.”

- d. APM 5.F.1.h., is a new section and is stated as follows:

“5.F.1.h. Contractor Confidentiality Agreements. As stated in APM 5.C.9., if a contractor is to receive confidential information in connection with submitting a quotation or contract performance, the Contracting Officer shall require the contractor to sign and return

the Contractor Confidentiality Agreement before providing the information. All signed Agreements shall be maintained in the official Contract File.”

- e. APM 6.B.7., is a new section added to the APM and is stated as follows:

“6.B.7. Contractor Confidentiality Agreements. Some contracts require the rendering of services to FDIC that are of such a nature that the offerors or contractor(s) will be provided with or have access to confidential information. When this occurs, the Contracting Officer shall require the offerors or contractor(s) to sign and return a Contractor Confidentiality Agreement prior to receiving the information. For example, if the confidential information is provided during the solicitation phase, the Contracting Officer shall require all offerors to sign the Agreement before receipt of the information in, or associated with, an RFP. The Agreement is provided in the APM as Exhibit II. All signed Agreements shall be maintained in the official Contract File. The Program Office should identify any confidential information required for a given procurement action in the Requirements Package.”

- f. APM 6.E.2.f. is a new section and is added as follows:

“6.E.2.f. Contractor Confidentiality Agreements. As stated in APM 6.B.7., if a contractor is to receive confidential information in connection with submitting a proposal or contract performance on a post award basis, the Contracting Officer shall require the contractor to sign and return the Contractor Confidentiality Agreement before providing the information. All signed Agreements shall be maintained in the official Contract File.”

- g. APM 7.A.2.a., *Oversight*, is deleted in its entirety and re-stated as follows:

“7.A.2.a. Oversight. Providing technical oversight and direction as required, including monitoring the contractor’s handling of confidential information, when provided, in accordance with APM 1.E.1.c., page 1-12.”

- h. APM 7.E.3., *Post-Award Conference Agenda*, a new section is added as follows:

“7.E.3.1. Confidential Information. Signing Contractor Confidentiality Agreements prior to receiving confidential information. Signed Agreements shall be maintained in the official Contract File.”

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- i. APM Exhibit II, *Contractor Confidentiality Agreement*, is deleted in its entirety and is re-stated as a revised Exhibit II attached to this Policy Memorandum.
6. Effective Date. This Policy Memorandum is effective immediately.
7. Contact. If you have any questions, please contact David K. McDermott at (202) 942-3434.

Attachment – Exhibit II, *Contractor Confidentiality Agreement*, Revised 3/98

cc: Jane Sartori
John Lynn

Distribution:

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